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conducts such sales does it at the peril of answering for the true value. But where the slaves are sold in families, altho' the executor has no right to consult his feelings at the expense of the legatees, yet he will not be charged the full value, unless the interest of the legatees is manifestly injured by the mode of sale. *d.* 422

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18. A single act of mal-administration cannot be made the foundation of a suit against an executor; but the whole administration must be inquired into, and if the frame of the bill does not permit this, it must be dismissed. *Id.* 463

19. One of several administrators, who assents to the delivery, by his co-administrator, of the assets to the next of kin, before the payment of debts, is guilty of a *devastavit*. So also, if the assets were delivered over in obedience to the decree of a Court, unless he shows that it was made *in invitum*. *McNair* v. *Ragland*, 516

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1. A post-nuptial agreement made upon sufficient consideration between husband and wife, will be enforced in Equity. *Liles* v. *Fleming*, 185

2. Where there was an agreement to settle property upon the wife, and the husband, by will, bequeathed that property to a stranger, it was held, the wife having dissented from the will, that her right to a child's part of the personalty, could be defeated only by a satisfaction in express words, or one resulting from a necessary implication, and there being neither, that she was entitled both to the settled property and to her child's part.—*Id.* 185

3. Where a son, who died intestate, unmarried and without issue, is bound by his agreement to support his mother, it was held, that she having succeeded to his personal estate absolutely, and to his real estate for life, had no claim against the heirs on account of their interest in the land, expectant upon her life estate, notwithstanding she had advanced the money for the purchase of the land. *Taylor* v. *Vick*, 274

4. One who has conveyed his property in trust to secure his own debt, and has assented to a sale of it upon disadvantageous terms, cannot in Equity, obtain a re-sale of it, altho' it was purchased by the creditor whose debt was secured. *Haines* v. *Cowles*, 428

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1. It seems, where the lapse of time forms no bar to the claim asserted, but only raises a presumption of fact in-

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2. The employment of a puffer at an auction sale is a fraud upon the bidders; and a Court of Equity will direct a bond, given by a bidder for property bought under such circumstances, to be delivered up. *Woods* v. *Hall*, 411

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1. Where there are children of the same mother, some born in wedlock and some illegitimate—the former class may inherit from the latter, and the latter may inherit from each other; but the latter cannot inherit from the former, nor can the mother, in any case, inherit from the latter. *Flinthom* v. *Holder*, 345

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BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. Where the payee of a promissory note mutilated it, by cutting of the name of the attesting witness, *held* that he was entitled to no relief in a Court of Equity. *Sharpe* v. *Bagwell*, 115

2. A bill was accepted for the accommodation of the drawer, and this fact was known to the indorser who when his indorsement was made, received from the drawer a bond and mortgage conditioned to be void if he should be indemnified against that and any subsequent indorsement. The drawer then conveyed the mortgaged premises in trust, to secure all his debts, with instructions in the deed to the trustee, to pay such debts first "as may be indorsed by the said indorser." After this convevance, the bill being protested was taken up, by giving the holder the note of the drawer, with the acceptor and indorser as sureties, which was paid by the acceptor, who procured an assignment of all the securities in the hands of the indorser and holder. *It was held*,

1. That there being no contract whereby the indorser and acceptor agreed to become co-sureties, the latter had no right to contribution from the former.

2. That the indorser being liable only on the default of the acceptor, the latter could not be subrogated to the rights which the holder had against the former.

3. That the mortgage being made for the personal indemnity of the indorser only, and not for the security of the *debt*, the acceptor had no right to pursue the fund, and that the indorser being indemnified by the acceptor's payment, the mortgage was *functus officio*.

4. That a mortgage to secure subsequent indorsements rested merely in contract, and was available for those only which were made while the property remained under the

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1. A bill of interpleader can be filed only by one in possession. Therefore where an administrator never had reduced the assets into possession, but they were in that of some of the distributees, who claimed adversely to him, a bill by him against the distributees, praying that they might interplead, is improper. *Martin v. Mayberry*, 169
2. But the Defendant to such bill, who claimed adversely, having answered, filed a cross bill, submitted to an account, &c. he was enjoined from computing the time spent in this litigation, in bar of an action at law to be brought by the administrator. *Id.* 169

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CONDITIONAL SALES.
1. Where, upon the face of a transaction, it is doubtful whether the parties intended to make a conditional sale, or a mortgage, Courts of Equity incline to consider it a mortgage; because by means of conditional sales, oppression is frequently exercised over the needy. *Poindexter v. M'Cannon*, 378
2. But there is no rule of Equity, which forbids the making of conditional sales. And where the subsequent acts of the parties are consistent with the idea of a sale, a redemption is not decreed. For altho' the acts of the parties are never regarded at Law as a rule of construction, yet in Equity they are considered as evidence of the intent. *Id.* 373
3. Where upon the purchase of a slave, a full price was paid, and no bond or covenant taken for the repayment of the purchase money, in case of the death of the slave, and possession was given immediately, *held*, that these circumstances, added to the fact that the buyer was necessitous, and that twelve years had elapsed before redemption was claimed, proved that a clause, whereby the seller reserved to himself the power of annulling the bargain, did not render the transaction a mortgage, but a conditional sale, to claim the benefit of which there must be a strict performance by the seller. *Id.* 373

CONFISCATION ACTS.
1. The treaty of 1783 revived the rights of British creditors and restored them the right to sue, as if the confiscation acts had not been passed. The war of 1812, there being no new confiscation acts, did not affect those rights, otherwise than to suspend the right of suing. *McNair v. Ragland*, 516
2. Whatever may be the effect of the treaty of 1783 upon the mutual rights of copartners, where the whole partnership property, or a portion of it, belonging to an alien partner, was seized under the confiscation laws, yet where the copartnership owed the alien partners for advances, the real

dent partner's share of these advances constituted, in Equity, a debt, which he owed his copartners, and which is within the treaty. *Id.* 516
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CONTRACTS.
1. An executory contract, made in consideration of an intended marriage, whereby the parties covenant to make a provision for an illegitimate child of the wife, will, under the act of 1799, be protected in a Court of Equity—and its specific execution enforced, in favor of such child, against the husband. *Kimbrough* v. *Davis*, 71
Vide *Fraud*, 1, 2, *Auction Sales*, 1, *Agreement*, *Statute of Frauds*, 1, *Partners*, 2, *Marriage Settlement*, 5, *Mistake*, 1, 2, *Specific Performance*, 1, *Remedy*, 1, 2. *Usury*, 1, 2, 3, 4.

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1. It seems, where a claim is asserted on the part of infants, who have an appearance of right, each party must pay his own costs. *Kirk* v. *Turner*, 14
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Vide *Trust*, 16.

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Vide *Jurisdiction*, 4, 5.

COVENANT.
1. Where one sells the land of another, setting out the title of the latter, and covenanting against it, no estate passes by the deed, and a second vendee cannot sue at Law, in his own name, on the covenants *Nesbit* v. *Brown*, 30
2. Where a vendor covenanted, in case of eviction, to pay double the purchase money, and also damages, it was held to be a penalty, not stipulated damages, and the purchase money and interest only could be recovered. *Id.* 30

CREDITORS.
1. A creditor, who takes an incumbrance to secure an antecedent debt, without releasing a surety, is not such a purchaser as is protected by want of notice. *Donaldson* v. *Bank of Cape Fear*. 103
2. A mere creditor, who has not obtained a lien by judgment, has no right to the aid of a Court of Equity, to follow the property of his debtor.—*Id.* 103
3. Where lands conveyed to D, M, & Co. and also to M, in trust for D, M, & Co. were conveyed by M, who died insolvent, indebted to the company, and without personal representation, to secure his individual debt, it was held, upon a bill filed by a creditor of the copartnership, to subject this property:
   1. That the creditor of M was not a purchaser for value, within the meaning of the rule which protects them when they are not affected with notice.
   2. That nothing passed by the deed, in the land conveyed to D, M, & Co.
   3. That no decree could be made founded on the fact that M was a debtor to the company, until his estate was represented.
   4. That the Plaintiff, not having established his demand, and having no lien, had no right to the assistance of a Court of Equity. *Id.* 108
4. Where there are two creditors, one of whom can obtain satisfaction only from the visible property of the debtor, and the other can subject not only that, but a special fund created for this indemnity; altho' a Court of Equity will compel the latter to resort to the special fund, or will subrogate the first to his right to that fund, yet the first creditor must demand this, before the latter has received satisfac-

tion from the visible property. If he waits, he has no equity against a third creditor, who obtains an assignment of the special fund. *Williams* v. *Washington*, 137

5. In Equity, a surety, in respect to his liability, is regarded as a creditor, and has a right to all the privileges of one. *Id.* 137

6. A surety has, in respect to his liability, the rights of a creditor, and upon the insolvency of the principal debtor may retain any funds belonging to him in his hands. *Williams* v. *Helme*, 151

7. Therefore, where the surety owed the principal debtor, who became insolvent, and assigned for value the debt due by the surety, *held* that the latter might retain the amount of his subsequent payments against the assignee. *Id.* 151

8. Before the passage of the act of 1812, a Court of Equity lent its aid to an execution creditor, to subject an equity of redemption subsisting in favor of the Defendant to the satisfaction of the execution. It will do so still, especially as the remedy is not so perfect at Law, as it can be made in this Court, by ascertaining before a sale, the amount of the debts charged upon the land *Harrison* v *Battle*, 537

9. A creditor must establish his debt at Law, to entitle himself to the aid of a Court of Equity. But a return of *nulla bona* is unnecessary, where it appears that all the debtor's property has been placed beyond the reach of final process. *Id.* 537

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1. A delivery of a deed is a parting with the possession of it by the grantor in such a manner as to deprive him of the right to recall it. *Kirk* v. *Turner*, 14

2. Where a deed was handed to the subscribing witness as the agent of the grantor, for the purpose of being proved, and was by the agent returned to the grantor without being proved, *held* that this was not a delivery. *Id.* 14

Vide *Covenant*, 1, *Grant*, 1, *Husband and Wife*, 5.

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DIVORCE.

1. For adultery, the Court *may* divorce *a vinculo matrimonii*, but is not bound to do so It will in its discretion either dissolve the marriage, or decree a separation of the parties. *Collier* v. *Collier*, 352

2. Where a husband admits his wife to conjugal embraces, with knowledge that she has committed adultery, he may notwithstanding seek a divorce for her subsequent misconduct.—*Id.* 352

DEPRECIATED CURRENCY.

1. A debt existing before the depreciation in the currency which took place during the revolutionary war, might have been discharged in that currency But if not paid or tendered during that period, upon the subsequent resumption of cash payments, the whole sum is to be paid without reference to the depreciation. *McNair* v. *Ragland*, 516

2. A debt contracted while the currency was depreciated, upon the resumption of cash payments, must be discharged according to the rate of depreciation at the date of the contract. *Id.* 516

3. But an agent, charged with the collection of debts is responsible only for what he collects; and if he received a debt in the depreciated currency, upon a settlement made after the resumption of cash payments, is to account only for the value of the currency at the time it was received.—*Id* 516

4. And where a collecting partner owed a debt to the co-partnership, contracted before the revolutionary war

and also collected money due to the co-partnership during the depreciation of the currency, upon a settlement of his accounts, allowance was made for the depreciation upon money collected, but not upon the debt due from himself. *Id.* 516

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DEVISE.

1. In a devise of personalty, "to be equally divided between my son P, my daughters D, C, & E, and the heirs of my daughter P." *held* that the latter took but one fifth among them. *Ricks* v. *Williams*, 3

2. A testator directed his lands to be sold, and the proceeds divided among his "heirs not heretofore mentioned." Held, 1st, that the land should be considered as money, & that the word *heirs* meant those entitled under the statute of distributions 2d. That the words *not heretofore mentioned* applied only to those taking beneficially under the will, and not to a legatee in trust.—*McCabe* v. *Spruill* 189

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1. Where the vendee of lands received no title, but only a bond to make one upon the payment of the purchase money, the dower of his wife in the land is not protected against the debt due the vendor for the purchase money.

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EXECUTORS.

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1. Morality and good faith require, that the vendor should disclose to the vendee every circumstance which may induce the latter to change his mind as to the contract. *Alston* v. *Outerbridge*, 18

2. Where a trustee sold at auction a *fee simple* in the trust land, and before the execution of the contract the trustee and the *cestui que trust* discovered that the deed of trust created only a life estate, *held* that the concealment of this discovery was fraudulent, and vacated the contract, altho' the deed of trust was publicly read, and the trustee only undertook to convey the title he had, and altho' the *cestui que trust* refused to guaranty the title of the trustee. *Id.* 18

3. It seems that fraud practised by a *cestui que trust* will avoid a sale honestly made by the trustee. *Cheshire* v. *Boon*, 22

4. A misrepresentation by the vendor of a fact which materially affects the value of the property sold, and of which the vendee is ignorant avoids the sale. *Woods* v. *Hall*, 411

Vide *Auction Sales* 1, 2, *Widows* 2, *Voluntary conveyances*. 2. *Creditors*, 1, 2, 3, *Mortgages*, 2. *Notice*, 1, 2, 3, *Marriage settlement*, 1, 2, 4, *Trust*, 15, *Husbannd and Wife*, 6, 7, 8, *Mistake*, 1, 2.

GAMING.

1. Upon the construction given to the act of 1788 (*Rev.* c. 284) for avoiding securities given upon a gaming consideration, money lost and paid cannot

at Law, be recovered back. *Dunn* v. *Holloway*, 322

2. Therefore Equity will not interpose to restrain the collection of a judgment, obtained on a bond void under that Statute, unless the judgment was obtained by a fraudulent circumvention of the Defendant at Law. *Id.* 322

GIFT.

1. Where a father, upon his daughter's marriage, before the act of 1806, sent home property with her, it was presumed to be a gift as between the parties, and should be taken as such in favor of creditors. *Collier* v. *Poe*, 55

2. But a declaration to the daughter accompanying the delivery, that a loan and not a gift was intended, is sufficient to rebut the presumption, and convert the husband into the father's bailee, altho' such declaration was unknown to the husband. *Id.* 55

Vide *Voluntary Conveyances*, 2, 3. *Slaves*, 1, 2, 3.

GRANT.

1. Although a misdescription of land, as to the County in which it lies, would not vitiate in a deed between individuals, it seems that a similar mistake in a grant would avoid it even at Law; because the grant is founded upon an entry and survey, which are to be made by sworn officers in the very County mentioned. *Lunsford* v. *Bostion*, 483

2. But if such misdescription in a grant does not avoid it, clearly an entry made in one County, when the land lies in another, is void. And a Court of Equity will not compel another person, who made an entry and obtained a grant of the same land, with notice of the former defective entry, to convey to the first enterer. *Id.* 483

3. Where the Plaintiff averred, that land entered by him was situate in one County, where he made his entry, and that the Defendant had, with notice of his entry, obtained a grant for the same land, upon an entry made in another County, *held*, that if the land did lie in the County where the Plaintiff's entry was made, his title was purely legal, and the remedy at Law complete. *Id.* 183

Vide *Notice*, 1, 2.

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Vide *Devise*, 2, *Legacies*, 5, 6, *Statute of Limitations*, 2, *Bastards*, 1.

HUSBAND AND WIFE

1. Where land was sold for partition under the act of 1812, and the share of the *feme covert* paid to the husband, a Court of Equity will decree her an indemnity against him. *Bryan* v. *Bryan*, 47

2. A *feme covert* being thus entitled, *held*, that she could, by her next friend, maintain an adversary suit against the administrator of an infant *propositus* and her husband, and that the fund was not liable for the debts of the latter, either to the administrator or the intestate. *Id.* 47

3. In this State, no settlement being made on the marriage, the wife has no equity against her husband, he being insolvent, for a provision out of her *choses* accruing during the coverture. *Id.* 47

4. Where land is sold for the purpose of partition, the share of a *feme covert* in the proceeds is considered as realty, and cannot be paid to her husband, except she directs it on a private examination. *In the matter of James Dozier's heirs*, 118

5. A married woman can be bound as to her land, there being no separate estate, only by her deed executed in the prescribed form, or the decree or judgment of a Court; and if her deed be informal it cannot be aided. *Green* v. *Branton*, 500

6. Where the husband, with the wife's privity and consent, sold her land, and she received and enjoyed the purchase money, upon her bill to be relieved against an obstacle to her, in asserting her right to the same land, her fraudulent conduct does not bar her—and an outstanding legal estate, which otherwise she had a right to have removed, will not be held up as a security for the purchase money.—*Id.* 500

7. A wife is in all cases barred by a judgment against her husband and herself, obtained during the coverture, unless obtained by a combination between

the other party and the husband, in fraud of the wife's rights; and if the husband, for his own convenience, declines to defend the suit, the wife cannot have the judgment reversed, simply because it was unjust.—*Id.* 500

8. As where the husband and wife were served with a *sci. fa.* to subject her land to her father's debt, and the husband, without collusion with the Plaintiff, or the administrator, declined defending her interest—*held*, that the wife was barred by the judgment.—*Id.* 500

9. Where a husband received with his wife a large personal estate in possession, during the coverture, and afterwards induced her to join him in a conveyance of her land to a third person, who re-conveyed it to the husband, and the conveyance and re-conveyance were only designed to vest the fee in the husband, *held*, upon a bill filed by the husband as administrator of his wife to recover chattels of which she was the *cestui que trust*, that the children of the wife by a former marriage had no equity to prevent his obtaining the legal title to those chattels. *Jasper* v. *Maxwell*, 357

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Vide *Costs*, 1, *Partition*, 1, *Administrators and Executors*, 2, *Trust*, 1.

INJUNCTION.

1. Injunctions are not awarded by Courts of Equity for the infringement of doubtful rights, until they have been established at Law. But when the right is clear, and the injury irreparable, an injunction will be awarded, altho' the right has not been established at Law, *Att'y General* v. *Hunter*, 12

2. Where a bill charged that the Defendant's mill dam injured the health of the relators, an injunction was perpetuated, notwithstanding the Defendant had been indicted for the same nuisance, on which there had been a mistrial, and altho' the indictment was still pending. *Id.* 12

3. It is an error to say that an injunction is of course waived by an amendment. But an injunction is never propped by an amendment. *Barnes* v. *Dickinson*, 326

4. An injunction is not dissolved of course upon the coming in of the answer, in which the Plaintiff's whole case is denied. The statement of the Defendant must be at least credible.—Any evasion in not responding to the material charges in the bill, or an extreme improbability in the statement of the Defendant, will induce the Court to retain the injunction. *Moore* v. *Hylton*, 429

Vide *Mortgage*, 7, *Bill of Interpleader*, 2.

INTENT.

Vide *Legacies*, 9, 10, *Residuary Clause*, 1, *Parol Evidence*, 1, *Marriage Settlement*, 1.

INTEREST.

1. Interest is not of course to be compounded in favor of a ward against the executors of his guardian, but simple interest only is to be computed from the death of the latter, unless compound interest was received. *Ryan* v. *Blount*, 382

2. Ordinarily a guardian is to be charged with compound interest; but he may be exempted from it by proving that, after suitable exertions, he was unable to realize it. *Id.* 382

3. A debtor is liable to pay interest, by virtue of his contract, whether he made it or not. An agent or trustee is liable, only because he made it, or might have made it, but for gross neglect. As where a collecting partner, in obedience to the confiscation acts, *bona fide* paid the share of his alien partner into the treasury, it was held, that whatever may be the effect of the treaty upon such payment of the principal debt, the collecting partner was not liable for interest thereon. *McNair* v. *Ragland*, 516

Vide *Administrators and Executors*, 8, 10, 11,

INTERLOCUTORY DECREE.

Vide *Rehearing*, 1.

JUDGMENTS AT LAW.

Vide *Jurisdiction*, 7, 8, *Gaming*, 2, *Mortgage*, 7, *Husband and Wife*, 7, 8.

JURISDICTION.

1. The jurisdiction of the County Courts as Courts of Equity, being confined to suits for distribution, they have no power to make any order in such suits, which is not necessary to a correct decision. *Kennon* v. *Branson*, 64
2. Therefore, in a petition for distribution, where the administrator and intestate had been copartners, and upon a reference of the partnership and administration accounts, a balance was reported against the estate—*held*, that this only formed a *defence* against the suit—and that a decree against the next of kin for such balance was erroneous. *Id.* 64
3. Whether a Court of general Equity jurisdiction could decree the Plaintiff to pay a balance against him? *Qu.*— *Id.* 64
4. For the recovery of legacies, filial portions and distributive shares, the County Courts are Courts of Equity, and have all the powers of such Courts. Upon proper cases, they may review or rehear their own decrees. But where a decree was made which disposed of the cause, it was held to be equivalent to an enrolment, and that they had no power, at a subsequent term, to rehear that cause.— *Simms* v. *Thompson*, 197
5. A review cannot be had for mistakes in a decree, which might have been rectified by proper attention. *Id.* 197
6. Where a party had an adequate legal remedy, and has brought an action and failed in it, he has no right to the aid of a Court of Equity. *Barnes* v. *Dickinson*, 273
7. A Court of Equity will not relieve against a judgment at Law, unless the Defendant was ignorant of the fact in question pending the suit, or it could not be received at Law, as a defence. *Peace* v. *Nailing*, 289
8. Courts of Equity do not allow appeals to them, merely to obtain a new trial. And where a party, on being sued at Law, attempted to establish a legal defence before the jury, and was unsuccessful, he cannot on the same facts obtain relief in Equity.— *Id.* 289
9. After a failure at Law, the party cast cannot come into a Court of Equity, merely because the verdict is unjust; unless the matters alleged in Equity do not constitute a defence at Law. *Alley* v. *Ledbetter*, 449
10. Where a discovery in aid of a defence at Law is sought from the conscience of the Defendant, it ought to be obtained pending the suit at Law. *Id.* 449
11. Discovery and relief are never given after a trial at Law, where the matter averred was available at Law, unless the party seeking it avers and proves that he was ignorant of the defence or evidence, at the time of the trial.— *Id.* 449
12. A Court of Equity will not, upon a dispute respecting the title to church property, decide a religious controversy between its members. *Organ Meeting House* v. *Seaford*, 454
13. Upon a bill filed in this State, to enforce a decree made in South Carolina, *held*, TAYLOR, Chief-Justice, *dissentiente*, that the Courts of this State have a right to examine into the merits of the decree as upon a bill of review. *Picket* v. *Johns*, 485
14. Where a resident of South-Carolina, upon separating from his wife, gave her a *post mortem* bond for her own benefit, and that of their children, and died in South Carolina, having voluntarily conveyed land in this State to illegitimate children, *held*, TAYLOR, Chief-Justice, dissenting, that a decree of the Chancery of South-Carolina, declaring this conveyance to be void against the wife and children, was a nullity, the subject matter being without its jurisdiction. Whether the land conveyed to the children is liable to be taken in satisfaction of the bond? *Qu. Id.* 128
15. In such a case it seems that subsequent advancements, made by the father to the children provided for in the bond, are considered a satisfaction of it *pro tanto*; and it is clear, that land charged with the payment of his debts is to be exhausted, before a Court of Equity will subject property conveyed, or bequeathed to the illegitimate children. *Id.* 128

Vide *Review*, 1, *Creditors*, 8, 9, *Injunction*, 1, 2, *Grant*, 3.

LAPSE OF TIME.

1. Altho' lapse of time is no bar to an express trust, yet payment or other satisfaction may be presumed from it. *Ivy* v. *Rogers*, 58
2. Where an administrator, two years after his qualification, made a return to the County Court admitting a balance against him, a bill filed twenty years afterwards by the next of kin, for that balance, without accounting for the delay, is too late. *Id.* 58
3. It seems, that the return alters the relation between the administrator and the next of kin, and divests the former of his character of trustee. *Id.* 58
4. Any delay in suing, which can be satisfactorily accounted for by the course of public events, will not be construed into an abandonment or satisfaction of the Plaintiff's demand. *McNair* v. *Ragland*, 533

Vide *Pleading*, 1, *Answer*, 1, *Trust*, 1, *Administrators and Executors*, 6, *Possession*, 1.

LEGACIES.

1. A bequest of a negro of a particular description, with a direction to the executor to purchase one, rather than divide families, is a pecuniary legacy. *White* v. *Beattie*, 87
2. Altho' specific legacies do not abate in favor of those which are pecuniary, yet where the testatrix bequeathed *all* her property specifically, and directed two negroes to be purchased for A and B, *held*, upon a deficiency of assets, that all the legacies must abate ratably. *Id.* 87
3. A legacy which is equal to, or larger in value than a debt due by the testator to the legatee, is *prima facie* a satisfaction of the debt. *Ward* v. *Cofield*, 108
4. Where A devised all his North Carolina property to his son B, and all his Tennessee property to his son D, a resident of Tennessee, and charged all his debts due in North Carolina upon the devise to B, a debt due to D less than the legacy to him, was held to be satisfied by it. *Id.* 108
5. The word *heirs*, in a will, where the testator recognizes the existence of the ancestor, means *heirs apparent*. In a bequest to J. P. and the heirs of S. J. P. takes a moiety. *Jourdan* v. *Green*, 270
6. In such a bequest to heirs, if it be of a present interest, those only take who are born at the date of the will, and perhaps at the death of the testator. But if the interest is expectant upon a life estate, those take who are born before the expiration of the particular estate. *Id.* 270
7. A testator bequeathed a large estate in land and slaves to his son, and by a subsequent clause of his will, gave one of the same slaves to his daughter. *Held*, that the legatees took the slave by moieties. *Field* v. *Eaton*, 283
8. The son claimed the slave by a gift prior to the will; but as he had taken other property under the will, *held*, that he had made his election, and could not claim against it. *Id.* 283
9. There being no *latent* ambiguity, but plain contradictory bequests, *held*, that parol evidence was inadmissible to prove the testator's intention to give the property to his son. *Id* 283
10. Where there is no *latent* ambiguity, but plain contradictory bequests, parol evidence of the testator's intention is inadmissible. *Id.* 283
11. Specific legacies do not abate upon a deficiency of assets, unless all the property of the testator be specifically bequeathed. *White* v. *Beattie*, 320
12. But where the testator does not give away the whole of his property specifically, and what is left is afterwards consumed or destroyed by the testator or his executor, this circumstance will not make the specific legacies abate. *Id.* 320
13. It seems, that to determine whether a specific legacy shall abate or not, evidence of the state of the assets *dehors* the will may be received. *Id* 320

Vide *Administrators and Executors*, 2, 4, 5, 14, 17. *Devise. Trust*, 5, 6, 7, 12, 14.

LETTERS OF ADMINISTRATION.

Vide *Administrators and Executors*, 21.

LIABILITY.

Vide *Sureties*, 1, 2, 3.

LIEN.

1. The vendor has a lien for the purchase money upon the land sold, against volunteers and purchasers with notice. *Wynne* v. *Alston*, 163
2. It seems, that a creditor who takes a lien for an antecedent debt, is not entitled to the privileges of a purchaser. *Id.* 163

Vide *Dower*, 1, *Agreement*, 3, *Assignment*, 1, *Trust*, 22.

MARRIAGE SETTLEMENT.

1. Where a marriage settlement does not conform to the intention of the parties, either thro' mistake or the fraud of one of the parties, it will be corrected by a Court of Equity. *Scott* v. *Duncan*, 403
2. Where however the correction interferes with the rights of the husband or wife, or issue of the marriage, it will be made with more caution, than where it affects collaterals only, who are strangers to the consideration of the deed. *Id.* 403
3. A marriage settlement, which does not conform to the intention of the wife, will not be annulled, so as to leave the property subject to the legal rights of the husband; but it will be reformed by inserting the omitted provision, upon the same principles on which articles are executed. *Id.* 403
4. Collaterals, who claim under a settlement procured by the fraud of their father, are excluded from any benefit under it, upon its being reformed.—*Id.* 403
5. An agreement by parol, made before the act of 1819 (*Rev.* c. 1016) by a father, in consideration of the marriage of his illegitimate daughter, to settle all his estate upon her husband, herself and the issue of the marriage, is binding; and altho' it does not attach specifically upon any portion of the father's property, so as to defeat a purchaser with notice, yet it will be enforced against volunteers claiming under him. For tho' the relation between the father and the illegitimate daughter is not sufficient to raise a use, yet the intervention of the husband extends to the wife and the issue. *Wall* v. *Scales*, 472
6. In executing such an agreement, care will be taken of the interest of the issue—and the husband submitting, the estate was limited to him for life with a power to make advancements upon the marriage or full age of the children; with remainder to the issue as tenants in common, and cross remainders between them upon their death under age and unmarried. *Id.* 472

Vide *Contracts*, 1, *Agreement*, 1, 2.

MARSHALLING.

Vide *Creditors*, 10.

MILLS.

Vide *Injunction*, 1, 2.

MISDESCRIPTION.

Vide *Grant*, 1, 2, 3.

MISTAKE.

1. Equity relieves against mistakes, as well as against fraud in a deed or contract in writing; and parol evidence is admissible to prove the mistake, tho' it is denied in the answer; and this where the Plaintiff seeks relief affirmatively on the ground of mistake. *Newsom* v. *Bufferlow*, 379
2. As where the owner of two adjoining tracts of land, having sold one of them, in describing the metes and bounds in a deed executed to the purchaser, by mistake included both tracts. The proof of the mistake being perfectly satisfactory, the vendee was decreed to re-convey to the vendor the tract of land not intended to be conveyed. *Id.* 379

Vide *Award*, 1, *Marriage Settlement*, 1, 2, *Grant*, 1.

MERGER.

Vide *Partners*, 2.

MONEY CONSIDERED AS LAND.

Vide *Lien*, 1, 2, *Husband and Wife*, 1, 2, 4, *Devise*, 2, *Partition*, 1.

MORTGAGES.

1. A subsequent mortgagee, whose deed is duly registered, is bound by a prior unregistered one, of which he had notice. *Pike* v. *Armstead*, 110
2. If a mortgagee, for the purpose of keeping up the mortgagor's credit, suffers his deed to remain unregistered it seems not to be fraudulent *per se*, but its character depends upon the intent.

It is not fraudulent as to one who knows the whole transaction. *Id.* 110
3. Where the lands conveyed in mortgage were sold by the mortgagor in separate parcels, the first vendee has no equity to marshal the whole mortgage debt upon a second—the latter having no notice of the purchase of the first. *Stanly* v. *Stocks*, 314
4. If the second vendee had notice of the purchase of the first, would that fact alter the rule? *Qu. Id.* 314
5. But where the first vendee paid his purchase money in extinguishment of the mortgage, and the second did not, *held*, upon an adjustment of the loss between them, that the payment of the first was to be estimated in his favor. *Id.* 314
6. In Equity, upon a bill by the mortgagor to redeem, he shall have relief, tho' at Law the estate of the mortgagee is barred; as upon a disseisin and seven years possession with color of title. *Benzein* v. *Robenett*, 444
7. A judgment creditor is not affected by notice of a prior unregistered mortgage, and is in this respect, distinguished from the vendee of the mortgagor himself. Therefore the Court will not enjoin such creditor from selling the mortgaged premises, under his execution *Davidson* v. *Cowan*, 470

Vide *Creditors*, 1, *Bills of Exchange*, 2, *Trust*, 4, *Conditional Sales*, 1, 2, 3, *Practice*, 6.

NOTICE, PURCHASER WITH AND WITHOUT.

1. Where a grant is obtained, with knowledge of the fact that the land had been before granted, such grant is void, and will be vacated in Equity. Where this state of facts appears, the Court will act, altho' the party entitled to relief is made Defendant with the fraudulent grantee, especially where the bill was filed many years ago, when our Equity system was imperfect, and the practice little understood. *Benzein* v. *Lenoir*, 225
2. Where such fradulent grant has been recently obtained, the Court will entertain a bill to vacate, *quia timet*; *a fortiori*, where possession has been had under it, so as to bar or cloud the title at Law, and will not only vacate the grant, but direct a reconveyance. *Id.* 225
3. It is no defence that the fraud was not intended for the person upon whom it has taken effect; for if fraud exists, the party practising it shall not be protected aginst any who are thereby injured. *Id.* 225

Vide *Creditors*, 1, 2. *Mortgage*, 1, 2, 3, 4, 5. *Trust*, 8. *Practice*, 5, 7. *Grant*, 2, 3. *Partition*, 2, 3. *Marriage Settlement*, 5.

NUISANCE.

Vide *Injunction*, 1, 2.

PAROL EVIDENCE.

1. Parol evidence is inadmissible to prove, that the intention of the testator was not properly expressed in the will; or that he used words, the meaning of which he did not understand. *Reeves* v. *Reeves*, 386

Vide *Legacies*, 9, 10, 13. *Statute of Frauds*, 1. *Mistake*, 1, 2.

PARTIES TO A SUIT.

1. Where a Plaintiff seeks to enforce an equity against Law, he can have no relief unless the person who has the legal title be a party to the suit. *Jones* v. *Jeffreys*, 492
2. A bill brought by some of the persons entitled under the residuary clause in a will, without making the others Defendants, or accounting for the omission, cannot be supported.—*Huson* v. *McKenzie*, 463
Arendell v. *Blackwell*, 354

Vide *Wills*, 2. *Administrators*, 19. *Statute of Limitations*, 4.

PARTITION.

1. Where land was sold for partition under the act of 1812, the share of a minor not being vested according to the act, a Court of Equity will follow the property, and decree it to an heir against an administrator. *Bryan* v. *Bryan*, 47
2. In a partition under the act of 1787, a charge of money upon the more valuable dividends, for equality of partition, is a *legal* charge upon the *land*, and follows it in the hands of a purchaser for valuable consideration without notice. *Wynne* v. *Tunstall*, 23

3. Money thus charged is realty as much as the land for which it is the substitute; and where it was allotted to the share of a *feme covert*, and the husband had taken a bond and given a receipt for it, held, that the husband and wife could recover the amount for her use *Id.* 23

Vide *Lien*, 1. *Husband and Wife*, 1, 4.

PARTNERS.

1. A deed to a copartnership vests the property in the firm, not in the individual members. Each takes an entirety, and by his own deed, can only convey his right to the residue after a settlement of the partnership accounts. *Donaldson* v. *Bank of Cape Fear*, 103

2. Where upon a contract by copartners, made in Virginia, the bond of one was taken to secure the partnership debt, *held*, that if by the law of that State, the contract be joint, the execution of the bond extinguished the debt; if joint and several, that it was no merger of the simple contract debt against the other partners; and as the creditor had a plain remedy against them at Law, a Court of Equity could not aid him further than by a discovery; and this, altho' he averred that the bond was executed in the copartnership name by one copartner, in ignorance on his part, that it did not bind the copartnership. *Spear* v. *Gillet* 466

Vide *Jurisdiction*. 3. *Creditors*, 3. *Depreciated Currency*, 4. *Confiscation*, 2. *Statute of Limitations*, 5, 6. *Interest*, 3.

PAYMENT.

Vide *Legacies*, 3, 4 *Trust*, 1. *Agreement*, 3. *Depreciated Currency*, 1, 2, 3, 4. *Lapse of Time*, 4.

PENALTY.

Vide *Covenant*, 2. *Usury*, 1, 2, 3, 4.

PLEAS.

Vide *Practice*, 9.

PLEADING.

1. A bill should contain only a statement of facts on which the Plaintiff's case is founded, not the evidence of those facts; therefore where lapse of time forms no bar to the claim, but only raises a presumption of fact inconsistent with it, the lapse need not be accounted for in the bill. *Nesbit* v. *Brown*, 30

Vide *Answer*, 1, 2, 3. *Bill of Interpleader*, 1.

POSSESSION.

1. Where the Plaintiff charged that the Defendant held slaves as his trustee, and prayed an account of the profits, and that the possession might be surrendered to him, and the Defendant denied the trust, and insisted that he had held possession twenty six years adversely to the right of the Plaintiff, and there was no proof of the trust—*held*, even if the Court had jurisdiction for a discovery or an account, that as the possession of the Defendant was a bar to an action at Law—by analogy it was a bar to the relief. *Mardre* v. *Leigh*, 368

Vide *Gift*, 1, *Widows*, 1.

POSSESSION WITH COLOR OF TITLE.

Vide *Mortgages*, 6.

PRACTICE.

1. Exceptions to a report, upon a reference to take an account, are unnecessary when the Master assigns unsatisfactory reasons for his conclusions.—*Hooks* v. *Sellers*, 61

2. It seems, that a bill to correct errors in an account, is in its nature, an exception, and to a report on such a bill stating a new account, none need be filed. *Id.* 61

3. Where a replication is taken to an answer, the answer is not evidence, unless responsive to the bill. Therefore, where the Plaintiff charged one assignment, and the Defendant denied that and set up another, and no proofs were taken—*held*, that the case was to be considered without reference to either. *Johnson* v. *Person*, 364

4. A reference to the Master to take an account need not be renewed at every term between the order and the report. *Id.* 364

5. If a party to a bill for an account re-

side out of the State, and has no known agent to attend to the suit, it is proper to serve notice of taking the account upon his Counsel in this Court. *Id.* 364

6. Upon a bill to foreclose or redeem a mortgage, its existence being admitted, a reference for an account of the amount due upon it is an order of course. Questions respecting that amount properly belong to the account, and are only heard upon exceptions to the report. *Blackledge* v. *Nelson*, 411

7. On the hearing of an original bill, in the nature of a supplemental bill, and bill of revivor, depositions taken in the original suit may be read. *Benzein* v. *Robenett*, 444

8. A reference is never made to establish a fact put in issue by the pleadings; but always relates to some matter supplemental to the relief granted at the hearing. *Lunsford* v. *Bostion*, 483

9. In Equity an admission in the plea may be used by the Plaintiff against the Defendant. *McNair* v. *Ragland*, 533

10. A cause which has been prematurely removed to this Court, must be remanded at the costs of the party removing it. *Taylor* v. *Dickens*, 71

11. No decree can be made against one on whom process has not been served, unless he has entered an appearance. *Ryan* v. *Blount*, 382

12. A guardian shall not be permitted to prosecute a suit against his ward. *Smith* v. *Dudley*, 354

Vide *Bill of Interpleader*, 1, 2. *Notice* 1. *Injunction*, 4. *Sci fa.* 1. *Administrators*, 18, 21. *Rehearing*, 1. *Answer*, 1, 2, 3. *Costs.*

PRIORITY.

Vide *Mortgage*, 1. *Creditors*, 4. *Notice*, 1, 2.

PUFFERS.

Vide *Auction sales*, 1.

PURCHASERS.

Vide *Creditors*, 1, 3. *Lien*, 1, 2, 3, 4. *Mortgage*, 3, 4, 5. *Administrators*, 5, 12, 13, 17. *Dower*, 1.

REFERENCE TO THE MASTER.

Vide *Practice*, 4, 6, 8.

REGISTRATION.

Vide *Mortgages*, 1, 2, 7. *Trust*, 8. *Voluntary Conveyances*, 4.

REHEARING.

1. A petition for a rehearing is the proper remedy against an interlocutory decree. *Ricks* v. *Williams*, 3

Vide *Jurisdiction*, 4.

RELEASE.

Vide *Administrators*, 7.

RELIGIOUS SOCIETIES.

Vide *Jurisdiction*, 12.

REMAINDER.

Vide *Administrators*, 4.

RELIEF.

1. Where a contract is declared to be void, the parties are remitted to their original rights; and where a Court of Equity aids in restoring them to those rights, it confines itself to restitution merely, and never decrees damages for a loss. *Ellis* v. *Ellis*, 398

2. Upon a parol contract for the sale of land, the bond of a third person was assigned, in payment of the purchase money, to the vendor, at the instance of the vendee, by one who was not a party to the contract, the obligor in which was insolvent at the time of the assignment. Upon a decree declaring the contract to be void, as the vendee could at Law recover neither the bond nor the money, the Court lent its aid; but proceeding on the principle of restitution merely, they ordered a judgment upon the bond in favor of the vendor, to be assigned to the vendee. *Id.* 398

Vide *Sci. Fa.* 1. *Creditors*, 8. *Bills of Exchange*, 1. *Jurisdiction*, 7, 8.

REMOVAL.

Vide *Costs*, 2.

REPAYMENT.

Vide *Specific Performance*, 1, 2.

RESIDUARY CLAUSE.

1. Every testator is presumed not to die intestate as to any part of his estate. Therefore a residuary clause, unless expressly restrained, always

passes whatever is not otherwise disposed of. *Reeves* v. *Reeves*, 386

RESTITUTION.

Vide *Relief*, 1, 2.

RESULTING TRUST.

Vide *Trust*.

REVIEW.

1. Whether a bill to review a decree of this Court can be filed in the Court below? *Qu. Barnes* v. *Dickinson*, 326
2. A bill of review for newly discovered testimony cannot be sustained, if the discovery was made in time to have been brought forward in either an amended or supplemental bill. *Id.* 326

Vide *Jurisdiction*, 4, 5.

ROADS.

1. Where the Legislature authorized one to open a road and collect tolls on it, a subsequent authority for a similar purpose to another is valid, altho' it may diminish the profits of the first road. *Allen* v. *Buncombe T. Co.* 119

SALE.

Vide *Fraud*, 6.

SATISFACTION.

Vide *Legacies*, 3, 4. *Trust*, 1.

SCIRE FACIAS.

1. Where a decree was made for the payment of money against an administrator, and it was ascertained by the decree that he had no assets—*held*, HENDERSON, Chief-Justice, *dissentiente*, that a *sci fa.* under the act of 1784 (*Rev.* c. 226) is confined to judgments at Law; and that the only remedy for the Plaintiff was by a bill against the heirs, to have satisfaction out of the real assets. *Jeffreys* v. *Yarborough*, 506

SET-OFF.

1. Where the Plaintiff and Defendant have mutual judgments in different Courts, and the Defendant is insolvent, a set-off will be allowed in Equity. *Iredell* v. *Langston*, 392

Vide *Trust*, 14.

SLAVES.

1. The second *proviso* of the third section of the act of 1806 (*Rev.* 701) respecting parol gifts of slaves, applies to the whole act, and is prospective in its operation. *Stallings* v. *Stallings*, 298
2. By that *proviso*, parol gifts of slaves to children are validated by the death and intestacy of the parent, without resuming the possession, and become effectual, from the time the slaves were delivered to the children. *Id.* 298
3. Where slaves were delivered to a child, and remained in his possession until the death of the parent intestate, it was held to be an advancement at *the time of delivery*, and the subsequent increase was not to be valued in making distribution of the parent's property, nor to be taken as an advancement to the child. *Id.* 298
4. Slaves can only be held as property; and conveyances, having for their object either their emancipation or a qualified state of slavery, are against public policy, and a trust results to the donor or his executor. *Stevens* v. *Ely*, 493
5. As where slaves were conveyed in trust to permit them to live together, and be industriously employed, and that the donee should exercise a control over their morals and furnish them with necessaries—*held*, that upon the face of the deed (HALL, Judge, *dissentiente*,) as the slaves were not considered the property of the donee, a trust resulted to the executor of the donor, and a conveyance of the legal title was directed to be made to him. *Id.* 493

Vide *Gift*, 1. *Administrators*, 4, 14.

SPECIFIC PERFORMANCE.

1. A bill in the alternative, either for a specific performance of a parol contract, or a repayment of the purchase money, is not sustained by Courts of Equity, because if the contract be avoided, the money may be recovered at Law. *Ellis* v. *Ellis*, 398
2. But upon a bill for a specific performance, which has been refused, where from peculiar circumstances, the Plaintiff cannot at Law, recover back his purchase money, its repayment is decreed. *Id.* 398

Vide *Statute of Frauds*, 1, 2. *Contracts*, 1.

STATUTES COMMENTED UPON.

1715, c. 2, Benzein v. Lenoir, 225
Benzein v. Robenett, 444
c. 7, Pike v. Armstead, 110
c. 10, Bailey v. Shannonhouse, 416
Cooke v. Streator, 374
Collier v. Poe, 55
1784, c. 226, Jeffreys v. Yarbrough, 506
1787, c. 274, Wynne v. Tunstall, 23
1788, c. 284, Dunn v. Holloway, 322
1799, c. 522, Kimbrough v. Davis, 71
Flintham v. Holder, 345
1806, c. 701, Stallings v. Stallings, 298
1812, c. 830, Harrison v. Battle, 537
c. 847, Bryan v. Bryan, 47
Dozier's Heirs, 118
1814, c. 869, Collier v. Collier, 353
1818, c. 962, Lee v. Norcom, 372
1819, c. 1016, Wall v. Scales, 472
Ellis v. Ellis, 180, 341
1820, c. 1037, Smith v. Washington, 318

STATUTE OF FRAUDS.

1. Where the Plaintiff seeks specific performance of an agreement for the sale of lands, and the Defendant denies the contract as alleged, and relies upon the statute, (1819, *Rev.* c. 1016) parol evidence cannot be received, even upon the ground of part performance, to show the contract. *Ellis* v. *Ellis*, 341
2. Whether if the contract so partly performed were admitted by the answer, the execution of it could be decreed since the statute? *Qu. Id.* 341
3. The act of 1819 (*Rev.* c. 1016) respecting parol contracts for the sale of lands and slaves, and the statute of frauds, (29 *Charles*, c. 2) were made to effect the same object, and should receive the same construction. *Ellis* v. *Ellis*, 180
4. And where the whole purchase money was paid and possession delivered according to the contract, altho' no note in writing was made of it, a specific execution was decreed. *Id.* 180

STATUTE OF LIMITATIONS.

1. The statute of limitations does not apply as between bailor and bailee, and the latter cannot, by denying the bailment and claiming against the bailor, make his possession adverse.—*Collier* v. *Poe*, 55
2. Where letters of administration upon the estate of a deceased debtor never have issued, and after more than seven years from the death of the intestate, assets come to his heirs—it was held, upon a bill filed by a creditor setting forth these facts, and praying to have his debt paid out of the assets lately come to the possession of the heirs, that the act of 1715 (*Rev.* c. 10) was a bar to the debt. *Cook* v. *Streator*, 324
2. To a bill against the executors of an executor, by the legatees of the first testator, a plea of the act of 1715 (*Rev.* c. 2) barring claims against dead men's estates unless made within seven years, is not available, without an averment that the residue of the estate had been paid to the Trustees of the University. *Bailey* v. *Shannonhouse*, 416
4. It seems, that if a Defendant in Equity intends to rely upon the statute of limitations, it must be pleaded. *McNair* v. *Ragland*, 533
5. Whether accounts between copartners are in any case barred by the statute of limitations? *Qu. Id.* 533
6. But where there is an agreement between copartners, under seal, to account, a bill for an account is not barred, before an action on the covenant would be. *Id.* 533

Vide *Bill of Interpleader*, 2. *Mortgage*, 6.

SUBSTITUTION.

Vide *Creditors*, 4. *Bills of Exchange*, 2. *Mortgage*, 3, 4, 5. *Sureties*, 4. *Trust*, 2, 3.

SUPPLEMENTAL BILL.

Vide *Sci. Fa.* 1.

SURETIES.

1. The order in which parties to a security are liable at law, is the order in which, independently of contract, they will be held bound in Equity.—*Smith* v. *Smith*, 178
2. In Equity, however, by a contract, the indorser may be made accountable to the maker, and the acceptor to the drawer. *Id.* 173
3. Where A, as surety, signed the note of B, payable to C, and it was indorsed by C at the request of and for the accommodation of B, there being no contract between A and C, whereby they agreed to become co-sureties of B, *held*, that A had no right to contribution from C. *Id.* 178
4. Where the administrator and one of the sureties to the administration bond;

were next of kin to the intestate, and upon a suit on the bond by an administrator *de bonis non*, a stranger, also a surety, was alone subjected, *held* that he had a right in Equity to retain the share of the principal to indemnify him in full, and that of his co-surety to equalize the loss. And that having satisfied the Judgment, he had, in Equity, a right to recover back the shares of his principal and co-surety. *Norfleet* v. *Cotton*, 334

Vide *Creditors*, 1, 3, 5, 6, 7. *Bills of Exchange*, 2.

TAXES.

Vide *Widows*, 1.

TENANCY IN COMMON.

Vide *Executors and Administrators*, 2.—*Legacies*, 7. *Partners*, 1.

TREATIES.

Vide *Confiscation Acts*, 1, 2.

TRUST.

1. Satisfaction of an open trust is not presumed from lapse of time; but a settlement between the trustee and *cestui que trust* changes the character of the trust, and subjects it to the presumption of satisfaction. Therefore where a settlement was made between an administrator and an infant distributee nearly of age, and not afterwards disaffirmed by the infant, it was held, that the lapse of twenty-two years raised the presumption of satisfaction. *Petty* v. *Harman*, 191

2. *Dictum*, *per* HENDERSON, Chief-Justice, the case of *Falls* v *Torrance* was decided upon the ground, that the trust was an open one and never had been closed. *Id.* 191

3. A trust being an incident of the legal estate in the land, is of necessity destroyed by whatever destroys or suspends the legal estate. Therefore the lord by escheat, the abator, intender, disseisor, &c. are not subject to a trust. *Benzein* v. *Lenoir*, 225

4. An equity of redemption is not a trust, but is a right inherent in the land, and charges all who take the land, altho' coming in in the post and by title paramount. *Id.* 225

5. The doctrine of execution *cy pres* does not prevail in this State, and if the intention of a testator cannot be literally fulfilled, a trust results for the heir or next of kin. *McAuley* v. *Wilson*, 276

6. Where a testator bequeathed property in trust, for the support of a minister of the Associate Seceding party, "who shall preach at the Seceding Congregation meeting house, called Gilead," and a majority of that congregation being of a different denomination, refused to permit a minister of the Associate Seceding party to officiate in their church; it was held, that a trust resulted, altho' the Associate Seceding party offered to build a church near the one mentioned by the testator. *Id.* 276

7. Where a testator directed his land to be sold, and the proceeds applied to a purpose which failed, *held*, there being no evidence of an intent to convert the land out and out into money, that a trust resulted to the heir at law, notwithstanding a residuary clause, bequeathing "any other thing not mentioned in this my last will." *Henderson* v. *Wilson*, 309

8. A conveyance of a *chose* in action, in trust to pay a debt, is within the act of 1820, (*Rev.* c. 1037) and unless registered within six months of its date, is void against a subsequent *bona fide* assignee without notice. *Smith* v. *Washington*, 311

9. When no rule for the management of a trust estate is prescribed by the creator of it, the law enjoins good faith, by which is meant honesty and diligence carefully applied—and a departure from the rule prescribed by the creator, or a failure in good faith, is a breach of trust for which the trustee is liable. *Hester* v. *Hester*, 328

10. Where a testator directed his debts to be collected, and a tract of land to be sold; and with the fund thus created, a residence for his family to be purchased—but the executors purchased to an amount exceeding the fund, and in the exercise of good faith, refused an advantageous offer for the land—*held*, that they had been guilty of a breach of trust only in exceeding the amount of the trust fund, and the purchase being divisible, they were decreed to hold the excess on their own account. *Id.* 328

11. Equity always compels the trustee to surrender the legal estate to the *cestui que trust*, unless the receipt of the profits by the trustee is necessary

to effectuate the intention of the creator of the trust. *Jasper* v. *Maxwell* 357

12. Where a testator bequeathed bank stock to his executor, in trust, to pay the dividends to his daughter for life; and upon the expiration of the charter of the bank, gave the same shares absolutely to his daughter without any limitation over—*held*, that the daughter took the stock absolutely, and that her administrator had a right to call for a transfer of it. *Id.* 357

13. Where a husband received with his wife a large personal estate in possession during the coverture, and induced her to join him in the conveyance of her land to a third person, who reconveyed it to the husband, and the conveyance and reconveyance were designed only to vest the fee in the husband—*held*, upon a bill filed by the husband as administrator of the wife, to recover chattels of which she was the *cestui que trust*, that the children of the wife by a former marriage had no equity to prevent his obtaining the legal title of those chattels.—*Id.* 357

14. S. C. by his will gave legacies to the children of J. C. The children died intestate, leaving their father the next of kin. The executor of S C. having obtained a decree against J. C. for a mortgage debt, died, and appointed the Plaintiffs his executors.—J. C. died also insolvent, leaving the debt unpaid; and the Defendant having administered on the estates of the children of J. C. upon a petition in the County Court, obtained a decree for their legacies against the Plaintiffs, who, thereupon brought their bill to set off the decree in favor of their testator against that for the legacies, alleging that there were no debts due from the estates of the children of J. C. and that his estate was beneficially entitled to the whole of the legacies. *Held*, that the Plaintiffs were entitled to the relief sought, which was nothing more than subjecting the funds of an insolvent *cestui que trust*, in the hands of his trustee, to the payment of his debts. *Iredell* v. *Langston*, 392

15. A fraudulent trustee, who pending a litigation between him and his *cestui que trust*, purchase the trust estate at a Sheriff's sale, acquires thereby no title, and the Sheriff's deed to him can stand only as a security for the amount of his bid. *Keaton* v *Cobb*, 439

16. Where the *cestui que trust* incurs costs at Law in defending a title purely equitable, against his trustee, and does not at once come into the proper forum for redress, he cannot in Equity recover his own costs at Law; but he is entitled to a repayment of the amount of costs paid to the trustee.—*Id.* 439

17. *Dictum, per* Henderson, Chief-Justice.—Where the legal estate passes, trusts annexed to it, which are either illegal or impolitic, are avoided, and a trust declared for the donor, or the donee declared to hold, discharged of any trust, as will best tend to suppress the illegal purpose. *Stevens* v. *Ely*, 493

18. *Dictum, per* Henderson, Chief-Justice.—In a will, estates are created by the intent of the devisor, however expressed; but to the creation of the same estate by deed, certain technical words are necessary. But when the estates are created, whether by deed or will, they possess similar qualities: and the same circumstances will in one case cause a trust to result to the heir, and in the other to the grantor. *Id.* 493

19. Under the first section of the act of 1811 (*Rev* c. 830) subjecting trust estates to execution, only such estates as are held in trust for the Defendant in the execution solely, are within the operation of the act. As the Sheriff's deed transfers the estate of both the trustee and *cestui que trust*, those cases where it is necessary, for the purposes of the trust, that the trustee should retain the legal estate, are not within its operation. As in case of a conveyance to sell and pay debts, and then in trust for the bargainor, the estate of the trustee is not destroyed by an execution sale of the interest of the *cestui que trust*. *Harrison* v. *Battle*, 537

20. But the interest of the bargainor, after payment of the debts, being in no respect distinguishable from an equity of redemption, may be sold under the second section of the act *Id.* 537

21. That section subjects equities of redemption in *law* only to execution sales. The same interest in chattels is left as at common law, and can be subjected to the satisfaction of an exe-

cution, only in a Court of Equity.—*Id.* 537

22. Where lands and slaves were conveyed, in trust to pay debts, with a resulting trust in favor of the bargainor, and after its execution the bargainor made further assignments of the resulting trust, to secure debts, and judgments were also recovered against him—*held*, that executions bound the resulting trust in the land from the *teste*; and if they overreached the assignments, had a priority; and that as to the resulting trust in the slaves, it was bound in Equity in favor of the creditor who first filed his bill, without reference to the *teste* of his execution; and that assignments made before the filing of the bill had a preference. *Id.* 538

23. Creditors secured by the deed upon land and slaves, are in favor of the execution creditors, having a lien upon a resulting trust in the land, marshalled so as to have their debts satisfied, *pro tanto*, by a sale of the slaves.—*Id.* 538

Vide *Fraud*, 2, 3. *Lapse of Time*, 1, 3. *Possession*, 1. *Agreement*, 4, 5. *Slaves*, 4, 5. *Interest*, 3.

TRUSTEE.

Vide *Trust*.

TRUSTEES OF THE UNIVERSITY.

Vide *Statute of Limitations*, 3.

USURY.

1. Wherever the debtor, by the terms of the contract, can avoid the payment of a larger by the payment of a smaller sum at an earlier day, the contract is not usurious. *Moore* v. *Hylton*, 429

2. In such case, the larger sum becomes a penalty, against which Equity will relieve. *Id.* 429

3. Where the holder of a bond for the payment of a certain sum promises to surrender the bond, upon the payment of a less sum at an earlier day, to take advantage of such promise, there must be a strict compliance on the part of the obligor. *Id.* 429

4. To constitute usury the obligation to pay more than legal interest must be absolute upon its face. *Id.* 429

VENDOR AND VENDEE.

Vide *Fraud*, 1, 2. *Lien*, 1. *Mortgage*, 3, 4, 5. *Fraud*, 6.

VOLUNTARY CONVEYANCES.

1. Defective voluntary conveyances are not aided by a Court of Equity; but rights vested under them are protected. *Dawson* v. *Dawson*, 93

2. Where a tenant in common of slaves voluntarily conveyed all of a particular kind, which might fall to his share upon a division, and then fraudulently contrived that none of that kind should be allotted to him—a division, made with this fraudulent intent, was held to be inconsistent with the rights which the deed vested in the donees. *Id.* 93

3. Volunteers, who claim under a deed of gift, executed under the impulse of feeling, rather than the convictions of the understanding, in which apparently the grantor did not exercise perfect free will, are not aided in a Court of Equity. *Dawson* v. *Alston*, 396

4. If a voluntary deed, fairly obtained, is destroyed by the donor before registration, a Court of Equity will compel him to convey the same property to the donee. *Tolar* v. *Tolar*, 456

Vide *Lien*, 3.

VOLUNTEERS.

Vide *Marriage Settlement*, 2. *Voluntary Conveyance*, 3.

WILLS.

1. A Plaintiff who claims under a will, which is not admitted in the answer, must produce it, or a copy of it at the hearing, or account for its loss. *Thompson* v. *Applewhite*, 460

2. One who claims under a will which is not established, must have all the persons interested to contest it before the Court. *Id.* 460

Vide *Legacies*, 5, 6, 7, 8, 9, 10. *Parol Evidence*, 1. *Residuary Clause*, 1.

WIDOWS.

1. A widow, who after the death of her husband, occupies his residence, his children, some of them of age, living with her, is under no obligation to pay the taxes accruing thereon, between his death and the assignment of her dower. *Branson* v. *Yancy*, 77

2. Therefore a purchase by her of the premises, for such taxes, made after the assignment of dower, without actual fraud, will not be set aside in favor of her husband's creditors. *Id.* 77

Vide *Agreement*, 2.